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In re Application of
Kubin et al.
Application No. 10/527,016
PCT No.: PCT/AT01/00159
Int. Filing Date: 21 May 2001
Priority Date: 23 May 2000
Atty. Docket No.: SONN:067US
For: Novel Preparation Of Hypericin
Bonded With Poly-N-Vinylamides

COMMUNICATION

This is in response to the renewed petition under 37 CFR 1.137(b) filed on 08 September 2005.

DISCUSSION

In a decision mailed on 16 August 2005, the petition under 37 CFR 1.137(b) filed on 07 March 2005 was dismissed without prejudice because

Regarding requirement (3), the petition includes a statement that "The entire delay from November 23, 2002, until the filing of the Petition Under 37 C.F.R. § 1.137(b) and United States application filed pursuant to 35 U.S.C. §371(c) submitted herewith was unintentional, for the reasons set forth below." However, the petition and the statements contained within it were made only by one of the joint inventors (Andreas Kubin) and his representative. There is no statement by either the other joint inventor (Hans Gunther Loew) or a representative of Mr. Loew as to whether Mr. Loew's actions constitute "unintentional delay" during the period from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b). Counsel must furnish either a statement from Mr. Loew or his duly appointed representative that the delay was in fact unintentional, or else a power of attorney executed by Mr. Loew in favor of present counsel. For these reasons, requirement (3) has not been satisfied.

It is noted that the declaration of the inventors filed on 07 March 2005 does not comply with 37 CFR 1.497(a) and (b) because it is not signed by joint inventor Hans Gunther Loew.

In response, petitioner has provided a "Declaration In Support Of Petition..." signed by both of the inventors and describing the circumstances under which this application became abandoned with respect to the national stage in the United States, even though "at all times we intended for the application to be nationalized into the United States." The inventors state that "The entire delay from November 23, 2002, until the filing of the Petition Under 37 C.F.R. §1.137(b) and United States application filed pursuant to 35 U.S.C. §371(c) submitted herewith was unintentional, for the reasons set forth below." This is being construed as a statement that

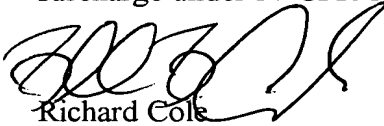
"the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Petitioner has filed a new declaration and power of attorney signed by both of the joint inventors and appointing present counsel. However, this declaration is not in compliance with 37 CFR 1.497(a)(2) because the application number to which it is directed was recorded by counsel after it was signed by the inventors.

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch for further processing including the preparation and mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) requiring the submission of an oath or declaration compliant with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(h).



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